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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its July 8, 2014 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

- 13-027 / Sierra (Sustained – Deputy 1, Deputy 2)
- 13-029 / Inga (Sustained – Deputy 1, Deputy 3)
- 13-031 / Portilla (SDSD)

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (3)

ALLEGATIONS, FINDINGS & RATIONALE

13-049

1. Misconduct/Intimidation – Deputy 1 threatened the complainant with arrest after he called 911 to report theft.

Board Finding: Not Sustained

Rationale: The complainant said fast-food employees confiscated his payment of a \$100 bill saying it was "fake." The complainant called law enforcement to report theft of the bill when they refused to return the money to him. He said when Deputy 1 responded and concurred that the bill was counterfeit, she told the complainant, "...I could also claim that you knowingly created and printed this bill and arrest you and that's a felony right there." Deputy 1 said she denied threatening the complainant with arrest and took his word regarding his innocence because he waited for law enforcement to respond. The deputy said she explained that person(s) who purposefully make and/or attempt to pass counterfeit bills are subject to arrest. There was no audio-recording or witnesses to this exchange and therefore insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 became defensive and only provided her name tag to the complainant’s request for information.

Board Finding: Not Sustained

Rationale: The complainant said, “I need information on you” and Deputy 1 became defensive by walking toward him with her hands up, which the complainant viewed as “intent to assault.” The complainant said he was able to see the deputy’s name tag and the deputy told him, “That’s all you need to know.” Sheriff’s policy mandates that deputies provide their name and identification number upon request. Deputy 1 acknowledged that she pointed to her name tag and also said she repeated her name to the complainant multiple times in conjunction with her ID number. Deputy 1 denied being defensive, but said she was suspicious as to the origin of the counterfeit bill, and after speaking with the complainant, felt he would try to pass the bill to someone else if it was returned to him. There were no witnesses or other evidence to corroborate or refute the individual statements.

3. Misconduct/Procedure – Deputy 1 did not take proper action after restaurant employees confiscated an alleged counterfeit bill from the complainant.

Board Finding: Action Justified

Rationale: It is incumbent upon every individual to take notice/examine money in their possession. The complainant believed that restaurant employees mistakenly confiscated his money and when law enforcement responded, the complainant inquired about Deputy 1’s authority regarding U.S. currency. Deputy 1 spoke with the business employees who are trained to recognize counterfeit bills, and then she also examined the bill. Deputy 1 explained the bill in question had the wrong fiber texture and was missing the embedded fluorescent strip. The Secret Service, the federal law enforcement entity that monitors, investigates and prosecutes counterfeiters, states that if a merchant receives counterfeit money they are not to return it to the passer, and to delay the passer if possible, contact local police, and surrender the note to law enforcement or the Secret Service Agency. Deputy 1 said she did not write a report or confiscate the counterfeit currency because the business did not ask her to do either. The business’ corporate office confirmed employees are not permitted to put the bill back into circulation and are to surrender the money to law enforcement or submit to the bank with their nightly deposit. The evidence showed the alleged act or conduct did occur, but was lawful, justified and proper.

13-050

1. Illegal Search – Deputies 3, 4, and/or 6 entered and looked through the complainant’s residence without consent.

Board Finding: Action Justified

Rationale: The complainant said a neighbor called police because his aggrieved son had not yet had his medication and was yelling and hitting the walls. When deputies arrived, the complainant did not invite them into his home. Deputies responded to the residence for a welfare check and needed to verify the well-being of any/everyone in the apartment. Deputy 6 provided specific and articulable facts, which justified entry and a cursory inspection of the home; the complainant’s consent was not needed because case law allows for protective sweeps with exigent circumstances. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

2. Excessive Force – Deputies 1-4 pinned the aggrieved to the ground while Deputy 6 kned him in the back and “multi-punched” his face.

Board Finding: Action Justified

Rationale: The complainant said two officers walked up behind his son, and then suddenly tackled him to the ground. A third officer helped hold his head, legs and arms down while a fourth officer punched the aggrieved in the face. When deputies approached the aggrieved, he reportedly yelled, “I will assault you, I will assault you.” He then pulled Deputy 6’s badge from his chest, ripped the cloth, and attempted to stab the deputy’s neck with the metal pointed edge of the badge. All of the deputies provided specific details of the aggrieved’s

assaultive actions and resistance, which forced them all to the ground, with the aggrieved landing on top of Deputy 3. While on the ground, the aggrieved reportedly continued to yell and fight, so Deputy 6 struck his mouth and chin 6-8 times with a closed fist, while Deputies 1, 2 and 4 attempted to hold and gain control of the suspect. The level of force used was effective to overcome the resistance and all of the utilized techniques were authorized by the Sheriff's Use of Force Guidelines. Deputies are trained to use a force option that is reasonable and necessary to a level where a subject cannot gain any advantage in a physical confrontation. The evidence showed the alleged actions and conduct did occur and were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 6 placed a spit sock on the aggrieved's head until another deputy said he did not spit and removed the hood.

Board Finding: Action Justified

Rationale: The complainant said the deputy who punched his son, laughed and placed a white hood over the aggrieved's head. Deputy 6 denied laughing during this incident. Deputies 1, 2 and 3 said they observed the aggrieved spit on Deputy 6's face multiple times. When ordered to stop, the aggrieved continued spitting so Deputy 2 placed his hand over the suspect's mouth. Deputy 1 then retrieved a spit sock from his patrol vehicle and placed it on the aggrieved's head with help from Deputy 6. Body fluids have inherent health risks, so to counter those measures, a spit sock prohibits saliva transmission; this light weight, sheer, protective mesh material does not impair vision or breathing. The evidence showed the alleged act or conduct did occur, but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 6 told the complainant, “we are trained to hit until a subject quits moving when told not to move” or words to that effect.

Board Finding: Not Sustained

Rationale: When the complainant asked for badge numbers/names, he said Deputy 6 approached and identified himself as the one who had struck the aggrieved and offered the above stated explanation. The complainant reportedly recorded the incident on his cell phone, but failed to provide the recording for the investigation. Deputy 6 denied the alleged statement attributed to him, and relayed that the complainant screamed there was no reason to strike his son and asked if he was trained in that way. There was no way to determine the differing context of these statements between the opposing parties, and whether or not it rose to a level of misconduct. There was insufficient evidence to either prove or disprove this allegation.

5. Misconduct/Truthfulness – Deputy 6 self-inflicted a torn-shirt, missing badge and neck scratch in an attempt to cover-up his “abusive” behavior.

Board Finding: Unfounded

Rationale: The complainant said he spoke with Deputy 6 immediately following the use of force and that he did not observe a torn shirt, missing badge or a scratch until after the deputy went to his patrol vehicle, and then returned; believing the deputy “self-inflicted” these damaging characteristics. Deputies 1-4 and 6 refuted the complainant's statements and individually described the aggrieved's assaultive behavior resulting in the injuries incurred by Deputy 6. The aggrieved was not criminally charged because of his mental condition and Deputy 6's use of force was within policy, so there was no incentive to fabricate these circumstances for any reason(s). The evidence showed that Deputy 6 was assaulted by the aggrieved and the alleged act or conduct portrayed by the complainant did not occur.

6. Misconduct/Intimidation – Deputy 7 scared away Mexican witnesses by asking if they were legal.

Board Finding: Not Sustained

Rationale: The complainant said two other witnesses of Mexican descent were present, but departed when Deputy 7 asked if they were “legal”. The complainant did not provide any further identifying description or information for follow-up. Deputies 1-4 and 6 denied asking if anyone was legal and all stated there were no additional witnesses present that were not interviewed. There was insufficient evidence to either prove or disprove this allegation.

7. Misconduct/Procedure – Deputies 1-5 refused to enforce the complainant’s request for a citizen’s arrest of Deputy 6.

Board Finding: Action Justified

Rationale: Following a use of force, the complainant objected when the primary deputy escorted the aggrieved to his vehicle for transport and requested a citizen’s arrest of Deputy 6 for aggravated assault and battery. A peace officer who under color of authority assaults a person without lawful necessity is subject to arrest. Deputy 6 lawfully utilized force to overcome the aggrieved’s resistance, while effecting an arrest for WI§ 5150, Mentally Disordered Person for Evaluation & Treatment. Deputy 2 stated there was no reason for deputies to intervene or separate the aggrieved from Deputy 6 who was professional throughout this contact. The evidence showed the actions taken by the involved deputies were lawful, justified and proper.

8. Misconduct/Procedure – Deputy 5 would not take a report/complaint and told the complainant to contact Internal Affairs (IA).

Board Finding: Not Sustained

Rationale: The complainant drove to the local Sheriff’s station to file a complaint relative to the excessive force used against the aggrieved, but said the Watch Commander stated his office would not take a report and instead referred him to Internal Affairs. Sheriff’s Policy & Procedure 2.21, Citizen Complaints mandates all employees to courteously and promptly accept and record any complaint made by a citizen. A deployment log verified Deputy 5 was the commanding officer at the local station. Deputy 5 relayed that the complainant demanded a citizen’s arrest (not a complaint), which he refused to execute, because his investigation of the incident revealed Deputy 6’s actions were within policy. But based upon the complainant’s demeanor, Deputy 5 informed him of his right to file a formal complaint with I.A. There is dispute between these two parties with regard to filing a complaint or making a citizen’s arrest and insufficient evidence to determine any other finding.

9. Misconduct/Harassment – Deputy 7 twice followed the complainant in his vehicle after this incident occurred.

Board Finding: Not Sustained

Rationale: Two days following this incident, the complainant said he twice observed patrol vehicles and believed he was being followed because they left when he took out his camera to take pictures. Imperial Beach is approximately 4 square miles in diameter and deputies actively patrol the area daily. All of the involved deputies were questioned and denied that they followed the complainant and/or asked anyone else to do so. The complainant failed to provide photographic evidence related to this matter, and without further identifying information for the involved personnel, there is insufficient information to investigate further, and insufficient evidence to prove or disprove the allegation.

10. Misconduct/Procedure — Deputies 1-4 and 6 used force to take a person not suspected of a public offense into custody.

Board Finding: Action Justified

Rationale: The complainant stated reasonable force can only be used to take a person into custody when a public offense is believed to have occurred and the aggrieved was never suspected of committing a public offense. Furthermore, case law does not authorize force to be used when taking a mentally disabled person into custody. Deputies contacted the aggrieved for a welfare check, at which time he made statements and displayed actions indicating he was a danger to himself and others. Deputies initially waited, observed, and then intervened. When Deputy 6 attempted to gain control and handcuff the aggrieved, he repeatedly yelled, “I will assault you,” and reportedly ripped the deputy’s metal badge from his uniform, attempted to stab the deputy’s neck, and then spit on the deputy’s face. The aggrieved’s actions constituted an assault on a peace officer, but no charges were brought forth due to his mental state. The evidence showed the actions taken by deputies were lawful, justified and proper.

1. Illegal Search or Seizure – Deputy 1 detained the complainant for an unreasonable period of time.

Board Finding: Action Justified

Rationale: The complainant stated Deputy 1 refused to promptly release him and withheld his traffic citation until a tow truck arrived to remove his vehicle. Deputy 1 conducted a traffic stop after he observed the complainant driving a vehicle with an inoperative headlamp. The complainant was unable to produce current vehicle registration or proof of insurance upon demand, and further investigation revealed that the vehicle registration was expired in excess of six months, resulting in the vehicle being impounded per California Vehicle Code § 22651, Circumstances Permitting Removal of Vehicle. Based on the complainant's observed behavior, and the location of prescription medications in his property, Deputy 1 attempted to conduct field coordination tests to determine if the complainant was driving under the influence. Although the complainant was not cooperative with the tests, Deputy 1 concluded that the complainant did not appear to be impaired. Deputy 1 conducted a search of the vehicle prior to turning it over to tow operators, and the complainant was cited and released. The evidence showed that the approximate 45-minute detention was reasonable, did not last longer than necessary, and was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 1 said to the complainant, "...you're either mentally ill or medicated," or words to that effect.

Board Finding: Action Justified

Rationale: The complainant reported Deputy 1 initially asked questions pertaining to warrants, drugs, and weapons prior to requesting his license, registration, and insurance information. Deputy 1 denied that he was disrespectful or rude when he questioned the complainant's mental health status. Questions pertaining to the complainant's mental health were initiated after Deputy 1 observed the complainant's eyes and his agitated state during the contact. Additionally, a search of the complainant's vehicle revealed prescription psychiatric medications which may have attributed to his agitated behavior. The complainant reported to Deputy 1 that he did not have any psychiatric problems. Deputy 1 attempted to determine if the complainant was under the influence of a controlled substance or had been experiencing psychiatric problems which needed to be addressed. Concluding that the complainant was not operating the vehicle under the influence of alcohol or drugs, he was released with a citation documenting the equipment and administrative violations. The evidence showed that Deputy 1 did question the complainant about his mental status, but the conduct was lawful, justified and proper.

3. False Reporting – Deputy 1 submitted false information to the Department of Motor Vehicles (DMV).

Board Finding: Action Justified

Rationale: The complainant stated Deputy 1 submitted fraudulent information to DMV relative to his physical and mental condition at the time of the traffic stop. Deputy 1 requested that DMV reexamine the complainant to demonstrate his continued fitness to operate a motor vehicle safely. Traffic officers are authorized, under California Vehicle Code § 21061, Notice of Reexamination, to issue a notice of reexamination to any person who violates traffic regulations, and exhibits evidence of incapacity which leads the traffic officer to reasonably believe that the person is incapable of operating a motor vehicle so as not to present a clear or potential danger of risk of injury to that person or others if permitted to resume operation of a motor vehicle. Deputy 1 documented the complainant's observed driving behavior and the ensuing actions during detention, which led him to believe reexamination was necessary. DMV notified the complainant of the Request for Reexamination and he failed to respond, resulting in the suspension of his driving privileges. Documentation submitted by the complainant to support reinstatement of his driving privileges included a favorable medical evaluation, which he contends contradicts the observations of Deputy 1; however, the medical evaluation was conducted nine months after the request for reexamination. The evidence showed that Deputy 1's conduct and actions were lawful, justified and proper.
